



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 18 2007

REPLY TO THE ATTENTION OF

(AE-17J)

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Allen Ellett, Air Team Leader  
BP Products North America, Inc.  
4001 Cedar Point Road  
Oregon, Ohio 43697

Dear Mr. Ellett:

This is to advise you that the United States Environmental Protection Agency (U.S. EPA) has determined that the BP Products North America, Inc. facility at 4001 Cedar Point Road, Oregon, Ohio (BP Toledo) is in violation of the Clean Air Act (CAA) and associated state or local pollution control requirements. A discussion of the requirements violated is provided below. A Notice of Violation and Finding of Violation (NOV/FOV) for these violations is being issued and is enclosed for your review.

The CAA requires the development of Primary and Secondary National Ambient Air Quality Standards (NAAQS) to protect public health and welfare. To attain and maintain these standards, each state is required to develop an implementation plan. Ohio's State Implementation Plan (Ohio SIP) includes the following requirements:

- 1) An owner or operator may not begin construction of a major modification at a major stationary source in an area that does not meet the NAAQS without first obtaining a permit to install (PTI) that contains an emission limit that represents the lowest achievable emission rate.
- 2) An owner or operator may not begin construction of a major modification at a major stationary source in an area that does not meet the NAAQS without first certifying that all major stationary sources owned or operated by the same entity in the State of Ohio are in compliance with the CAA.

- 3) An owner or operator may not begin construction of a major modification at a major stationary source in an area that does not meet the NAAQS without first obtaining offsetting emission reductions from other stationary sources in the same area.

U.S. EPA finds that BP Toledo's facility has violated the above listed Ohio SIP requirements as well as Title I of the CAA and its implementing regulations, which require compliance with the terms and conditions of the Ohio SIP.

Since BP Toledo's facility is subject to applicable requirements under the Ohio SIP that are not listed in its Title V permit, it has also violated Title V of the CAA and its associated regulations which require all CAA requirements applicable to a source to be incorporated into that source's Title V permit.

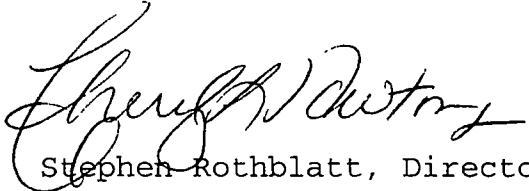
Section 113 of the CAA gives us several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

Section 113 of the CAA provides you with the opportunity to request a conference with us about the violations alleged in the NOV/FOV. A conference should be requested within 10 days following receipt of this notice. A conference should be held within 30 days following receipt of this notice. This conference will provide you with an opportunity to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The U.S. EPA contacts in this matter are Kathryn Siegel and Erik Hardin. You may call them at (312) 353-1377 and (312) 886-2402, respectively, if you wish to request a conference. U.S. EPA hopes that this NOV/FOV will encourage BP Toledo's compliance with the requirements of the CAA.

U.S. EPA hopes that this FOV/NOV will encourage BP Toledo's compliance with the requirements of the CAA.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosure

cc: Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Agency

Karen Granata, Administrator  
City of Toledo Division of Environmental Service

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	
	)	
BP Products North America	)	NOTICE OF VIOLATION and
Toledo, Ohio	)	FINDING OF VIOLATION
	)	
	)	EPA-5-07-OH-22
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 et seq.	)	

**NOTICE AND FINDING OF VIOLATION**

BP Products North America, Inc. (you or BP) owns and operates a petroleum refinery at 4001 Cedar Point Road in Oregon, Ohio (BP Toledo or the Facility). The facility includes a fluidized catalytic cracking unit (FCCU) identified in permits as P007 and the B-train gas oil hydrotreater (BGOT) identified in permits as P029.

The United States Environmental Protection Agency (U.S. EPA) is sending this Notice of Violation and Finding of Violation (NOV/FOV or Notice) because we find that you conducted a major modification causing a significant increase in nitrogen oxide (NO<sub>x</sub>) emissions. This modification occurred at a major stationary source in an area that was designated as non-attainment for ozone at the time of the modification. You failed to meet New Source Review (NSR) requirements in the Ohio State Implementation Plan (SIP) and you did not incorporate these requirements into your Title V permit. These exceedances constitute violations of the Clean Air Act (the Act or CAA).

Section 113 of the Act provides you with the opportunity to request a conference with us to discuss the violations alleged in the NOV/FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for the facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

## **Explanation of Violations**

1. The following provisions of the Ohio SIP are relevant to this NOV/FOV:
  - a. Ohio SIP Ohio Administrative Code (OAC) 3745-31-21(A) prohibits owners or operators of major stationary sources from beginning construction of a major modification without first meeting the NSR requirements in Ohio SIP Rules 3745-31-21 through 3745-31-27.
  - b. Ohio SIP Rule OAC 3745-31-01(SS)(1) defines "major stationary source" in non-attainment areas as any stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of any air pollutant subject to regulation under the CAA.
  - c. Ohio SIP Rule OAC 3745-31-01(RR) defines "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase.
  - d. In reference to oxides of nitrogen (NO<sub>x</sub>), Ohio SIP Rule OAC 3745-31-01(SSS) defines "significant" with regard to a net emissions increase as rate of emissions that would equal or exceed 40 tons per year.
  - e. Ohio SIP Rule OAC 3745-31-26(B), in relevant part, establishes that the emission of NO<sub>x</sub> from stationary sources shall be treated as a non-attainment air pollutant in each county that is designated non-attainment for ozone.
  - f. Ohio SIP Rule OAC 3745-31-22(A)(1) requires that permits allowing major modifications at major stationary sources in non-attainment areas include an emission limit that is the lowest achievable emission rate (LAER) for such a stationary source.
  - g. Ohio SIP Rule OAC 3745-31-01(OO)(1) and (2) define "lowest achievable emission rate" as the more stringent of the following two options:
    - i. The most stringent emissions limitation that is

contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

- ii. The most stringent emissions limitation that is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source.
- h. Ohio SIP Rule OAC 3745-31-22(A)(2) requires an owner or operator applying for a permit for a major modification to a major stationary source in a non-attainment area to certify that all other existing major stationary sources that it owns or operates in Ohio are in compliance with all applicable emission limitations and standards under the CAA or with a federally enforceable or court decreed compliance schedule.
- i. Ohio SIP Rule OAC 3745-31-22(A)(3) requires an owner or operator applying for a permit for a major modification to a major stationary source in a non-attainment area to offset emissions by reducing emissions from existing air contaminant sources in the same area.
- j. Title V of the CAA establishes an operating permit program for major sources. The purpose of Title V is to ensure that all "applicable requirements" for compliance with the CAA, including SIP requirements, are collected in one place.
- k. Title V requires that each permit issued under this program include enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the CAA, including the requirements of the applicable SIP.
- l. Under Title V, any owner or operator of a source subject to the Title V program is required to submit a timely and complete permit application that contains

information sufficient to determine the applicability of any CAA requirements, certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

- m. Under Title V, any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application is required to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.
  - n. Title V program requirements are codified at Section 503 of the CAA, 42 U.S.C. § 7661b with implementing regulations at 40 C.F.R. Part 70.
- 2. On or about November 2005, BP Toledo chose to meet new gasoline sulfur standards by adding a second reactor to the BGOT and running exclusively hydrotreated feed to its FCCU.
  - 3. The changes in the feed to the FCCU resulted in less coke production in the FCCU. BP reduced the amount of air used in the combustion of this coke by a lesser amount than the reduction in the amount of coke produced, thus increasing the air to fuel ratio in the regeneration process in the FCCU.
  - 4. BP changed the method of operation of the FCCU by changing the feed and increasing the air to fuel ratio during regeneration.
  - 5. The increase in the air to fuel ratio during regeneration increased NO<sub>x</sub> emissions from BP's Toledo Refinery by more than 40 tons per year.
  - 6. This change in the method of operation is a major modification as defined by Ohio SIP Rule OAC 3745-31-01(RR).
  - 7. BP began this major modification without first obtaining a permit containing an emission limit that represents LAER for FCCUs. BP continues to operate the FCCU without a LAER limit in place. This is a continuing violation of Ohio SIP Rule OAC 3745-31-22(A)(1).

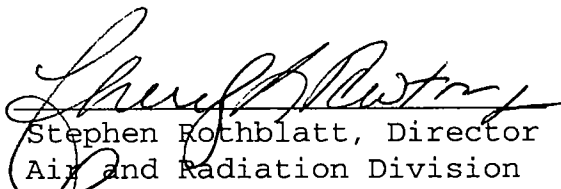
8. BP's Toledo Refinery is located in Lucas County which was listed as non-attainment for ozone in November 2005. On June 12, 2007, U.S. EPA published a proposed approval of a redesignation of this county to attainment for ozone. 72 FR 32247.
9. BP began this major modification without first certifying that all other existing major stationary sources that it owns or operates in Ohio are in compliance with all applicable emission limitations and standards under the CAA or with a federally enforceable or court decreed compliance schedule. This is a violation of Ohio SIP Rule OAC 3745-31-22(A)(2).
10. BP began this major modification without first obtaining offsetting NO<sub>x</sub> emissions from existing air contaminant sources in the same area. BP continues to operate the FCCU with increased NO<sub>x</sub> emissions that have not been offset. This is a continuing violation of Ohio SIP Rule OAC 3745-31-22(A)(3).
11. BP Toledo is continuously violating Title V permitting requirements at Section 503 of the CAA and 40 C.F.R. Part 70, because it has yet to submit a complete application for a Title V operating permit for the Facility that identifies all applicable requirements, that accurately certifies compliance with such requirements, and that contains a compliance plan for all applicable requirements for which it is not in compliance (including information pertaining to the modification described in paragraphs 2 through 4 and the requirement to meet LAER).

#### **Environmental Impact of Violations**

12. Excess emissions of NO<sub>x</sub> increase ground level concentrations of ozone and nitrogen dioxide, both of which can cause respiratory inflammation, increased difficulty breathing, and lung damage. NO<sub>x</sub> emissions also contribute to acid rain, global warming, the formation of fine particles in the atmosphere, water quality deterioration, and visibility impairment.

Date

9/18/07

  
Stephen Rothblatt, Director  
Air and Radiation Division



**CERTIFICATE OF MAILING**

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-07-OH-22, by Certified Mail, Return Receipt Requested, to:

Allen Ellett, Environmental Team Leader  
BP Products North America, Inc.  
4001 Cedar Point Road  
Oregon, Ohio 43697

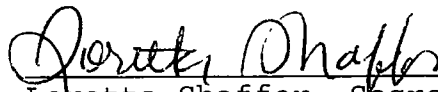
I also certify that I sent copies of the Finding of Violation and Notice of Violation by first class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Karen Granata, Administrator  
City of Toledo Division of Environmental Services  
348 South Erie Street  
Toledo, Ohio 43602

on the 30 day of September, 2007.

  
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Loretta Shaffer, Secretary  
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010330000589191785